

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JOHN STEVEN OLAUSEN,

4 Plaintiff

5 v.

6 JACQUELINE BRYANT, et. al.

7 Defendants
8

Case No.: 3:20-cv-00402-MMD-WGC

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 31, 31-1

9 This Report and Recommendation is made to the Honorable Miranda M. Du, United
10 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28
11 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Before the court is Plaintiff's Motion for Leave to File Second Amended/Supplemental
13 Complaint and proposed Second Amended Complaint (SAC). (ECF Nos. 31, 31-1.)

14 After a thorough review, it is recommended that the motion be granted and the SAC be
15 filed; however, it is further recommended that the SAC be dismissed.

16 **I. BACKGROUND**

17 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),
18 proceeding pro se with this action pursuant to 42 U.S.C. § 1983. Plaintiff filed his original
19 complaint on June 30, 2020. (ECF No. 1-1.) On July 21, 2020, he paid the \$400 filing fee. (ECF
20 No. 5.) He subsequently filed a motion for leave to file a first amended complaint (FAC), which
21 the court granted. (ECF No. 15, FAC at ECF No. 16.) The FAC was in line for screening when
22 Plaintiff filed this motion for leave to file his SAC and proposed SAC. (ECF No. 31, 31-1.)
23

II. LEAVE TO AMEND

“A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(A), (B). Otherwise, a party must seek the opposing party’s written consent or leave of court to amend a pleading. Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

Here, Plaintiff’s FAC had not yet been screened and so it had not yet been served; therefore, the court will allow Plaintiff to file the SAC. The SAC (ECF No. 31-1) should be filed, and it supersedes the FAC as the operative pleading. *See Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (citations omitted). The court will now screen the SAC.

III. SCREENING

A. Screening Standard

Under 28 U.S.C. § 1915A, “[t]he court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). In conducting this review, the court “shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint-- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b)(1)-(2).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915A(b)(1) tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the court

1 applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d
2 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is essentially a ruling on a question of
3 law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

4 The court must accept as true the allegations, construe the pleadings in the light most
5 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,
6 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less
7 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9
8 (1980) (internal quotation marks and citation omitted).

9 A complaint must contain more than a "formulaic recitation of the elements of a cause of
10 action," it must contain factual allegations sufficient to "raise a right to relief above the
11 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading
12 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
13 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a
14 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at
15 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

16 A dismissal should not be without leave to amend unless it is clear from the face of the
17 complaint that the action is frivolous and could not be amended to state a federal claim, or the
18 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
19 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

20 **B. Additional Background Facts**

21 To understand Plaintiff's SAC and the court's recommendation for dismissal, it is
22 important to include a discussion of the following facts, of which the court may take judicial
23 notice:

1 In 1979, Plaintiff pleaded guilty to first-degree murder, robbery with use of a deadly
2 weapon, and kidnapping with the use of a deadly weapon, and was sentenced to death. *See*
3 *Wilson v. State of Nevada*, 771 P.2d 583, 584, 105 Nev. 110, 112 (1989). The Nevada Supreme
4 Court upheld Plaintiff's sentence twice. *See Wilson v. State of Nevada*, 664 P.2d 328, 99 Nev.
5 362 (1983); *Wilson v. State of Nevada*, 705 P.2d 151, 101 Nev. 452 (1985). In post-conviction
6 proceedings, the Nevada Supreme Court did ultimately find that Plaintiff had a meritorious claim
7 that his Sixth Amendment right to effective assistance of counsel was violated in the sentencing
8 hearing. *See Wilson*, 771 P.2d at 584. On March 30, 1989, the Nevada Supreme Court vacated
9 Plaintiff's death sentence and remanded his case to the state district court for another penalty
10 hearing. *Id.*

11 The state district court re-sentenced Plaintiff to life in prison without the possibility of
12 parole for murder. *State v. Olausen*, Case No. C79-1086D (Nev. Dist. Ct. Dec. 7, 1989). Plaintiff
13 believes that the Nevada Supreme Court vacated not only his sentence but also his conviction,
14 and that he is not being held pursuant to a valid and existing state court judgment of conviction
15 and sentence. Therefore, he sought collateral habeas relief in federal district court. His first
16 petition was denied, with some claims being denied on the merits while others were procedurally
17 barred. *Olausen v. Helling*, Case No. 3:01-cv-00499-LRH-RAM. He filed a second petition
18 under 28 U.S.C. § 2241, but the court found it was a successive petition that should have been
19 brought under 28 U.S.C. § 2254. *Olausen v. McDaniel*, Case No. 3:05-cv-00631-LRH-RAM.
20 The court transferred the petition to the Ninth Circuit Court of Appeals because Plaintiff had not
21 obtained permission to file a successive petition under section 2244(b)(3)(A). *Id.* The Ninth
22 Circuit rejected Plaintiff's arguments, both procedurally (finding his successive petition could not
23 be brought under section 2241) and substantively (finding he was in fact imprisoned under a

1 valid judgment of conviction or sentence). *See Olausen v. McDaniel*, Case No. 3:08-cv-00447-
2 LRH-RAM, 2010 WL 4810369, at *1-2 (D. Nev. Nov. 19, 2010) (quoting the Ninth Circuit's
3 findings). The Ninth Circuit found that when the Nevada Supreme Court vacated his death
4 sentence, it did not acquit him, but "left his conviction for first degree murder intact." *See id.* at
5 2.

6 Plaintiff filed several other federal habeas petitions, all of which were denied as
7 impermissible successive petitions. *Olausen v. Dir. Nev. Dep't of Corr.*, Case No. 3:06-cv-
8 00069-PMP-VPC; *Olausen v. McDaniel*, Case No. 3:06-cv-00257-LRH-VPC; *Olausen v.*
9 *McDaniel*, Case No. 3:08-cv-00447-LRH-RAM; *Olausen v. Sheriff of Washoe Cnty. Jail*, Case
10 No. 3:08-cv-00527-LRH-RAM; *Olausen v. Benedetti*, Case No. 3:10-cv-00388-LRH-RAM;
11 *Olausen v. Cox*, Case No. 3:14-cv-00315-RCJ-WGC (dismissed for failure to pay the filing fee);
12 *Olausen v. Baca*, Case No. 3:15-cv-00127-RCJ-VPC, 2015 WL 6962869 (D. Nev. Nov. 9,
13 2015).

14 Plaintiff sought renewed relief in state court. In an order denying Plaintiff's requested
15 relief as a successive habeas petition, the Nevada Supreme Court noted that it "observed a
16 potential clerical error in the record—the record appears to be missing a judgment of conviction
17 setting forth the sentences for the kidnapping and robbery counts." *Olausen v. Benedetti*, Case
18 No. 63660, 2014 WL 494863, at *2 (Nev. Jan. 16, 2014). Plaintiff had entered a guilty plea to
19 the first-degree murder, kidnapping with the use of a deadly weapon, and robbery with the use of
20 a deadly weapon counts in 1979. *Id.* The Court recounted that on December 14, 1979, a three-
21 judge panel returned a death sentence on the murder charge, and entered a judgment of
22 conviction that same date. The district court also sentenced him to serve two consecutive terms
23 of life without the possibility of parole for the kidnapping count and two consecutive terms of

1 fifteen years for the robbery count, to be served consecutively to one another and concurrently
2 with the sentence for the murder charge. The sentences for the kidnapping and robbery counts,
3 however, were not reflected in the December 14, 1979 judgment of conviction, although the
4 record did contain a document titled "certified copy of judgment of imprisonment" as attested to
5 by the clerk of court. *Id.* That document, though, was not itself a judgment of conviction because
6 the district judge's name was only typewritten on the document and not signed. The Court said
7 that it was not clear whether the original judgment of conviction was lost over the lengthy
8 passage of time, but directed the district court to inquire into the whereabouts of the original
9 judgment of conviction setting forth the sentences for the kidnapping and robbery counts, and if
10 an original cannot be located, to enter a judgment of conviction *nunc pro tunc* to the sentencing
11 date of December 14, 1979, to reflect the sentences at the December 14, 1979 sentencing
12 hearing. *Id.* In a footnote, the Nevada Supreme Court said that "[e]ntry of a new judgment of
13 conviction is not intended to serve as a basis for a second direct appeal, which is not permitted,
14 or to restart the clock to file a post-conviction petition for writ of habeas corpus in view of the
15 fact that appellant has already litigated or had an opportunity to litigate the guilt phase of his
16 conviction over the decades since his conviction was final." *Id.* at n. 9.

17 The district court did not find an original judgment of conviction, and entered judgment
18 *nunc pro tunc* to the sentencing date of December 14, 1979, codifying the sentence pronounced
19 by Judge Peter Breen on that date. (ECF No. 31-1 at 25-27.)

20 **C. Plaintiff's SAC**

21 Plaintiff's SAC names the following defendants: Attorney Richard F. Cornell, District
22 Court Clerk Jacqueline Bryant, John/Jane Doe County Administrators of policy making, Nevada
23 Supreme Court Justice James Hardesty, Nevada Supreme Court Justice Michael L. Douglas, and

1 Nevada Supreme Court Justice Michael Cherry, Retired Police Officer Gary Eubanks, Retired
2 Police Officer Brown, District Attorney Christopher Hicks, Retired Judge Peter Breen, (former)
3 District Attorney Cal Dunlap, (former) District Attorney Mills Lane, Prison Warden Perry
4 Russell, Senior Prison Guard Steinheimer, (retired) State Court Judge Gerome Polaha, Court
5 Clerk Staff Member Jerry McCarthy, Appointed Attorney Lynn Bogg, John/Jane Doe Prison
6 Commissioners, State Court Judge Connie J. Steinheimer, and (former) State Court Judge Elliott
7 Sattler.

8 Plaintiff states that he is suing for denial of redress of grievances in violation of the First
9 Amendment; excessive confinement and excessive use of force under the Eighth Amendment;
10 denial of due process in violation of the Fourteenth Amendment; and denial of the right to
11 counsel in violation of the Sixth Amendment.

12 **1. Claim 1**

13 In Claim 1, Plaintiff asserts that his rights under the First Amendment were violated
14 when he was denied public/private information by officials who had involvement with the victim
15 from his underlying criminal proceeding, Officer James D. Hoff.

16 Plaintiff alleges that on March 18, 2018, he filed a "judicial notice" with Judge
17 Steinheimer stating he was being denied information that would allow him to exercise his right
18 to petition the court for redress of grievances. He also said that without the court's certified proof
19 of the true cause of his imprisonment, he is obstructed from his right to communicate and acquire
20 counsel.

21 Plaintiff appears to allege that he filed a motion to disqualify Judge Steinheimer from his
22 case, asserting that she has a conflict because she was a deputy district attorney from 1980 to
23 1983, and she served as a lawyer associated with Cal Dunlap, who was private counsel to the

1 victim in Plaintiff's case, and Dunlap was one of the lawyers who created the James D. Hoff
2 Memorial, and supported the victim in Plaintiff's case.

3 Plaintiff then asserts that Judge Polaha cannot rule on his motion to disqualify Judge
4 Steinheimer. It appears that he asserts that Judge Polaha was one of Plaintiff's former post-
5 conviction relief attorneys in an evidentiary hearing. In addition, he says that Judge Sattler
6 cannot preside over his case because he is a former deputy district attorney and all of them
7 (former deputy district attorneys) participated in the James D. Hoff Victim's Memorial and Judge
8 Sattler previously recused himself on that basis.

9 Next, Plaintiff alleges that on April 17, 2019, he filed a letter with Jacqueline Bryant
10 stating that the courts were manipulating a criminal case file to make it appear that
11 December 14, 1979 kidnapping and robbery sentences were entered in the record on that date,
12 which he claims was false and illegal (presumably this is referring to the *nunc pro tunc* entry of
13 the judgment of conviction on these counts, discussed above). Essentially, he asserts that no such
14 judgment of conviction/sentence was ever signed by Judge Breen and entered by the clerk. He
15 asserts that the "judgment of imprisonment" reviewed by Bryant is a false document used by
16 Bryant against Plaintiff to cause his excessive confinement.

17 Plaintiff alleges that Justices Hardesty, Douglas and Cherry "are believed to be James D.
18 Hoff Peace Officer's Memorial victims." It appears he meant to assert that they were supporters
19 of this memorial, but this also is unclear. He takes issue with their "false clerical error
20 hypothesis" and use of the "copy of judgment of imprisonment" in asking the clerk to inquire
21 about the judgment of conviction from Judge Breen. Plaintiff claims he was blocked from these
22 facts.

1 Plaintiff goes on to assert that Justices Hardesty, Douglas, Cherry, Judge Steinheimer,
2 Judge Polaha, Judge Sattler, Judge Breen, Dunlap, Lane, Hicks, Russell, (Guard) Steinheimer,
3 and the John/Jane Does conspired to cover up the issue Plaintiff raised about their connection
4 with the victim. (He also references "Gammick," presumably referring to former District
5 Attorney Gammick, who is not named a defendant in the SAC). He also includes allegations
6 about a promise not to seek the death penalty, and the introduction of aggravating factors that
7 should not have been asserted. He further avers that Judge Breen knew he did not have
8 jurisdiction and sentenced Plaintiff to death in an intentional plot to murder Plaintiff, in
9 conspiracy with Dunlap.

10 He avers that Judge Steinheimer conspired with Judge Breen possibly with respect to his
11 re-sentencing.

12 Plaintiff asserts that the denial of this information on the record denied his right to
13 petition the court for his grievances. He contends that there is only a fraudulent conviction on the
14 record. He alleges that Bryant was deliberately indifferent to the fraudulent judgment, which has
15 caused his excessive confinement.

16 He further alleges he was retaliated against by "physical, emotional, psychological,
17 mental and property legal access to the courts injury by Perry Russell[.]" He states that Russell is
18 a "James D. Hoff victim partner" and an extension of the ongoing conspiracies to harm and
19 threaten to harm Plaintiff.

20 Plaintiff goes on to assert that on September 25, 2020 or October 2, 2020 Senior
21 Correctional Officer Steinheimer as well as Russell conspired to retaliated against Plaintiff for
22 exercising his right to petition the court, though he provides no facts about how they purportedly
23 retaliated against him. He also claims that on December 11, 2020, Russell retaliated against him,

1 referencing ECF No. 22 at 1-34. That is an emergency motion for appointment of counsel filed
2 by Plaintiff in this action, but the SAC itself contains no information related to what conduct
3 Russell apparently took against Plaintiff.

4 Plaintiff further avers that Richard Cornell is an "undeclared" James D. Hoff "victim
5 participant." He then states that there is a September 17, 2018, limited letter of legal
6 representation where a fee was misused without a refund being issued.

7 Finally, he asserts that district attorneys and Reno Police Department want to prevent
8 Plaintiff from getting information, especially information that is exculpatory.

9 **2. Claim 2**

10 Plaintiff alleges that Bryant conspired with Justices Hardesty, Douglas, and Cherry as
11 well as Judge Steinheimer, to incarcerate Plaintiff by a clerical function rather than a judicial
12 function.

13 **3. Claim 3**

14 Plaintiff alleges that Bryant was deliberately indifferent in not informing the State courts
15 that their intention to incarcerate Plaintiff on the basis of a lost pre-existing judgment of
16 conviction is false because no such judgment of conviction was ever received by the clerk of
17 court from Judge Breen.

18 **4. Analysis**

19 **a. *Rooker-Feldman***

20 Essentially, Plaintiff's SAC asks this court to review proceedings that have taken place in
21 State court. He claims that Justices Hardesty, Douglas and Cherry improperly told the clerk of
22 court to inquire into whether there had been a clerical error with respect to Plaintiff's judgment of
23 conviction/sentence. He avers that the court clerk acted improperly in undertaking this inquiry.

1 As District Judge Du explained to Plaintiff in another order denying Plaintiff's request for
2 injunctive relief, this court cannot intervene in Plaintiff's State court proceedings. *Rooker v.*
3 *Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 482, 482-
4 86 (1983). The *Rooker-Feldman* doctrine prevents this court from functionally overturning the
5 Nevada court's judgment of conviction, sentencing, or re-sentencing, or the entry of the judgment
6 of conviction *nunc pro tunc*.

7 Similarly, the *Younger* abstention doctrine precludes this court from interfering with
8 ongoing state court proceedings. *See Younger v. Harris*, 401 U.S. 37 (1971); *see also H.C. ex rel.*
9 *Gordon v. Koppel*, 203 F.3d 610, 612-13 (9th Cir. 2000). So, insofar as Plaintiff asks the court to
10 intervene in whether State court judges should be disqualified from hearing further challenges he
11 raises in State court, that is not an appropriate area of inquiry for this court. Plaintiff must raise
12 those arguments, if appropriate, directly in State court.

13 For these reasons, and additional reasons discussed below, this action should be
14 dismissed.

15 **b. Judges**

16 Judges are entitled to absolute judicial immunity for acts performed in their official
17 capacity, as Plaintiff has alleged here. *See In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002)
18 (judicial immunity is “a ‘sweeping form of immunity’ for acts performed by judges that relate to
19 the ‘judicial process.’” “This absolute immunity insulates judges from charges of erroneous acts
20 or irregular action, even when it is alleged that such action was driven by malicious or corrupt
21 motives, ... or when the exercise of judicial authority is ‘flawed by the commission of grave
22 procedural errors.’”) (citations omitted); *see also Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th
23 Cir. 1986) (en banc); *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996) (“The judicial or

1 quasi-judicial immunity available to federal officers is not limited to immunity from damages,
2 but extends to actions for declaratory, injunctive and other equitable relief.'").

3 Therefore, dismissal with prejudice is also appropriate on this additional basis as to
4 Justice Hardesty, Justice Douglas, Justice Cherry, retired Judge Breen, Judge Steinheimer,
5 former Judge Elliott Sattler, and retired Judge Polaha.

6 **c. District Attorneys/Deputy District Attorneys**

7 Plaintiff names as defendants the current Washoe County District Attorney Christopher
8 Hicks, as well as former Washoe County District Attorneys Cal Dunlap and Mills Lane.

9 Prosecutors have absolute immunity or conduct that is an integral part of the judicial
10 process. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). To the extent Plaintiff names District
11 Attorney Christopher Hicks, and former District Attorneys Dunlap and Lane on the basis of their
12 involvement in his prosecution and post-conviction matters, they should be dismissed.

13 **d. Appointed Attorney and Private Counsel**

14 Plaintiff briefly mentions Lynn Bogg, whom he alleges was an appointed attorney.
15 Plaintiff also sues Richard F. Cornell, a private attorney. Plaintiff also alleges that Cal Dunlap
16 was a private attorney for the victim in Plaintiff's criminal case.

17 If Bogg was a public defender or alternate public defender, she was not a state actor and
18 so cannot be sued under section 1983. *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992);
19 *Jackson v. Brown*, 513 F.3d 1057, 1079 (9th Cir. 2008).

20 In addition, to the extent these individuals were private attorneys, they are not state actors
21 for purposes of section 1983 and cannot be sued as such. *See Szijarto v. Legeman*, 466 F.2d 864
22 (9th Cir. 1972) (per curiam) ("an attorney, whether retained or appointed, does not act 'under
23 color of state law.'").

1 **e. Clerk/Clerk Staff**

2 Court clerks have absolute quasi-judicial immunity when they perform tasks that are an
3 integral part of the judicial process. *Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir. 1979).

4 Therefore, Plaintiff's claims against Jacqueline Bryant should be dismissed on this
5 additional basis. Plaintiff names as a defendant Jerry McCarthy, and intimates this is a member
6 of the clerk's staff; however, he includes no specific factual allegations as to McCarthy. For these
7 reasons, dismissal of McCarthy is also appropriate.

8 **f. Police Officers**

9 Plaintiff names retired police officers Gary Eubanks and Brown, but includes no
10 substantive allegations to state a claim against these officers. Therefore, dismissal of these
11 defendants is appropriate on this basis.

12 **g. Prison Defendants**

13 Plaintiff names Warden Perry Russell and guard Steinheimer, but only includes vague
14 allegations about their engaging in a conspiracy as well as retaliation without providing any
15 factual allegations to support a claim against them.

16 **h. Doe Defendants**

17 Finally, Plaintiff names the John/Jane Doe County Administrator of policy making
18 John/Jane Doe Prison Commissioners, but includes no factual allegations to state a claim against
19 them, even if they were eventually identified.

20 **D. Conclusion**

21 For the above-stated reasons, the SAC should be dismissed. Plaintiff has already taken
22 three opportunities to amend, and given the nature of his claims, the court finds that any further
23

1 efforts at amendment would be futile. Therefore, the dismissal of this action should be with
2 prejudice.

3 **IV. RECOMMENDATION**

4 IT IS HEREBY RECOMMENDED that the District Judge enter an order:
5 **GRANTING** the motion for leave to amend to file the SAC (ECF No. 31), **FILING** the SAC
6 (ECF No. 31-1), and **DISMISSING** the SAC **WITH PREJUDICE**. In light of this
7 recommendation, Plaintiff's other pending motions (ECF Nos. 30 and 33) should be **DENIED**
8 **AS MOOT**.

9 The parties should be aware of the following:

10 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
11 this Report and Recommendation within fourteen days of being served with a copy of the Report
12 and Recommendation. These objections should be titled "Objections to Magistrate Judge's
13 Report and Recommendation" and should be accompanied by points and authorities for
14 consideration by the district judge.

15 2. That this Report and Recommendation is not an appealable order and that any notice of
16 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
17 until entry of judgment by the district court.

18
19 Dated: March 11, 2021

20 

21 William G. Cobb
22 United States Magistrate Judge
23